



FOR CLERK USE ONLY

City Council

Item No. 10

CITY COUNCIL AGENDA

FACT SHEET

Utility Services Department

Department

August 3, 2010

Requested Date

1. Request:

Council Approval

☒Information Only/
Presentation☐

Other (specify)

☐

Hearing

☐

2. Requested Action:

1. Authorize City Manager to sign an agreement between the City of Calexico and the Federal Aviation Administration for the Earthquake Damage Repairs Project, and the PAPI's, REIL's and Paving Markings Project at the Calexico International Airport.
2. Approve the attached Budget Amendment Resolution.

3. Fiscal Impact:

Revenue

Increase

☒

Source:

FAA Grants

03-06-0034-13 \$371,386

03-06-0034-14 \$513,000

RDA \$ 44,220

Decrease

☐

Amount: \$

Cost:

Increase

☐

Source:

Decrease

☐

Amount:

4. Reviewed By:

Finance Dept. on

Comments:

07/29/2010

By:

City Attorney on

Comments:

By:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., Tuesday, prior to the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE:

Action

☐

Consent

☐

Hearing

☐

Filing

☐

Presentation

☐

Other (specify)

☐

Reviewed by: City Clerk

Date

City Manager

Date

CITY COUNCIL AGENDA REPORT

SUBJECT: Request ratification for the City Manager to Sign an Agreement between the City of Calexico and Federal Aviation Administration for the Earthquake Damage Repairs Project and the PAPI's, REIL's and Paving Markings Project at Calexico International Airport, and BAR approval.

AGENDA DATE: August 3, 2010

PREPARED BY: Luis Estrada, Director of Utility Services



APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: the City Council is requested to take the following action:

1. Authorize the City Manager to Sign an Agreement between the City of Calexico and Federal Aviation Administration for the Earthquake Damage Repairs Project and the PAPI's, REIL's and Paving Markings Project at Calexico International Airport
2. Approve the attached Budget Amendment Resolution

FISCAL IMPACT: Grant #13, Earthquake Damage Repairs Project, is estimated at \$371,386 and Grant #14 PAPI's, REIL's and Paving Markings Project is estimated at \$513,000 including construction and soft costs. Of these projects 95% will be funded by the FAA and the remaining 5% (\$44,219) to be funded by the City.

BACKGROUND INFORMATION:

- The Airport sustained damage caused by the 2010 Easter Sunday Earthquake: specifically to the east access road and the runway. The City applied for an FAA grant to repair the damage and authorized the design services necessary for the Project. It was determined that about 1,200 ft of roadway needs total reconstruction and about 115 feet of the runway needs a leveling course.
- The Airport will install Precision Approach Path Indicators to replace existing broken Visual Approach Slope Indicator, install Runway End Identifier Lights, re-designate taxiways and install airfield signage and install pavement markings to meet current standards.

DISCUSSION: (Current consideration)

The City received a Grant Offer from the Federal Aviation Administration AIP 3-06-0034-013-2010 in the amount of \$371,386 and AIP 3-06-0034-014-2010 in the amount of \$513,000.

BUDGET AMENDMENT RESOLUTION NO. 10-11 ____**BUDGET AMENDMENT RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF CALEXICO AUTHORIZING AN AMENDMENT
TO THE FINAL BUDGET FOR FISCAL YEAR 2010-11 FOR
_____ DEPARTMENT**

WHEREAS, the Final Budget for Fiscal Year 2010-11 was adopted by Resolution No. ____ (City) of the City Council and Resolution No. ____ (Calexico Redevelopment Agency) of the Redevelopment Agency Board on _____; and

WHEREAS, the City Council has authorized the amendment of the Final Budget, in accordance with proper governmental accounting and financial reporting practices; and

NOW THEREFORE, the City Council of the City of Calexico hereby resolves and authorizes the following action(s):

AMENDMENTS TO ADOPTED BUDGET:**1) Record Revenue Estimate(s):**

Fund No./ Org Key	Fund Title Org Key Title	Object Code	Object Code Title	Amount
534-5225	AIP 03-06-0034-013	46032	Federal Grant	352,816
534-5226	AIP 03-06-0034-014	46032	Federal Grant	487,350
<i>Total</i>				840,166

2) Record Appropriation(s):

Fund No./ Org Key	Fund Title Org Key Title	Object Code	Object Code Title	Amount
534-5225	AIP 03-06-0034-013	57003	Improv Oth T Building	371,386
534-5226	AIP 03-06-0034-014	57003	Improv Oth T Building	513,000
<i>Total</i>				884,386

3) Record Transfer of Funds:**FROM:**

Fund No./ Org Key	Fund Title Org Key Title	Object Code	Object Code Title	Amount
421-6134	RDA Restricted (2003C Bonds)	59905	Transfer Out	44,220
<i>Total</i>				44,220

TO:

Fund No./ Org Key	Fund Title Org Key Title	Object Code	Object Code Title	Amount
534-5225	AIP 03-06-0034-013	49905	Transfer In	18,570
534-5226	AIP 03-06-0034-014	49905	Transfer In	25,650
<i>Total</i>				44,220

CAPITAL EXPENDITURE AUTHORIZATION:

4) Record Specific Capital Item(s) or Project:

Fund/Org Key/Object Code (Complete Account No.)	Quantity	Description	Amount
534-57003-5225	1	Earthquake Damage	371,386
534-57003-5226	1	Repairs, PAPI's, REIL's, & Pavement Markings Project.	513,000
<i>Total</i>			884,386

5) Purpose of Budget Amendment:

The Federal Aviation Administration (FAA) awarded the Utility Services Department two grants totaling \$884,386 for the Calexico International Airport's Earthquake Damage Repairs Project, and the PAPI's, REIL's and Paving Markings Project.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Calexico at the regular meeting this 3rd day of August, 2010.

JOHN MORENO, Mayor

ATTEST:

LOURDES CORDOVA, City Clerk

APPROVED AS TO FORM;

JENNIFER M. LYON, City Attorney

STATE OF CALIFORNIA)
CITY OF CALEXICO) ss.
COUNTY OF IMPERIAL)

I, Lourdes Cordova, City Clerk of the City of Calexico, do hereby certify under the penalty of perjury, that the foregoing Resolution No. 10-___, was duly adopted by the City Council at a meeting of said City Council held on the 3rd day of August, 2010, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

LOURDES CORDOVA, City Clerk
City of Calexico

cc: Finance Department



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Airports Division
Los Angeles Airports District Office

P.O. Box 92007
Los Angeles, CA 90009

JUL 27 2010

Luis Estrada
Director of Utility Services
608 Heber Avenue
Calexico, CA 92231

Dear Mr. Estrada:

**Calexico International Airport
Calexico, CA: AIP 3-06-0034-013-2010
Grant Offer**

It is our pleasure to inform you the Calexico International Airport, fiscal year 2010 Airport Improvement Program (AIP) Grant No. 3-06-0034-013-2010 has been approved.

Enclosed are three (3) original copies of the grant agreement, under which the United States commits itself to participate in the allowable cost of the project not to exceed \$371,386.

Your acceptance of the grant offer will obligate the City of Calexico to accomplish the described construction project. An official of the sponsor shall accept this offer no later than July 28, 2010, by signing the enclosed grant agreement in the space provided.

Please note that the date of execution of the grant agreement shall be no later than July 28, 2010. The date of the Certificate of Sponsor's Attorney should NOT be earlier than the date of execution.

When the documents are fully executed, attested, certified and impressed with appropriate seal, please return two (2) original copies of the agreement to our office.

If you have any questions, please call your Program Manager, Ms. Kimchi Hoang, at (310) 725-3617 or me at (310) 725-3621.

Sincerely,

Ruben C. Cabalbag
Acting Manager, Los Angeles Airports District Office

Enclosure



GRANT AGREEMENT

U. S. Department of Transportation
Federal Aviation Administration

Date of Offer: JUL 27 2008
Project Number: 3-06-0034-013-2010

Recipient: City of Calexico (Herein called "Sponsor")
Airport: Calexico International Airport

OFFER

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States' share, ninety five percent (95%) of the allowable costs incurred in accomplishing the project consisting of the following:

"Reconstruct East Airport Access Road; Rehab Airport Beacons, & Runway 08/26"

as more particularly described in the Project Application dated 04/26/2010.

The maximum obligation of the United States payable under this Offer shall be \$371,386 for airport development, \$0 for noise program implementation, \$0 for land, and \$0 for planning.

This offer is made in accordance with and for the purpose of carrying out the provisions of Title 49, United States Code, herein called Title 49 U.S.C. Acceptance and execution of this offer shall comprise a Grant Agreement, as provided by Title 49 U.S.C., constituting the contractual obligations and rights of the United States and the Sponsor.

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION


Ruben Cabalbag
Acting Manager, Los Angeles Airports District Office

SPECIAL CONDITIONS

Terms and Conditions Signed and Dated on 06/21/2010

Please note that this grant offer may be funded all or in part, with funds from the Small Airport Fund.

ACCEPTANCE

The Sponsor agrees to accomplish the project in compliance with the terms and conditions contained herein, in the Project Application, and in the November 2008, "Terms and Conditions of Accepting Airport Improvement Program Grants" signed on 06/21/2010.

Executed this ____ day of _____, 2010 ____

Signature of Sponsor's Designated Official Representative

(Seal)

Title

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify: That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of California. Further, I have examined the foregoing Grant Agreement, and the actions taken by said Sponsor relating thereto, and find that the acceptance thereof by said Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and Title 49 U.S.C. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Signature of Sponsor's Attorney

Executed this ____ day of _____, 2010

ATTACHMENT A: SPECIAL CONDITIONS

1. The sponsor agrees to perform the following:
 - (a) Furnish a construction management program to FAA prior to the start of construction which shall detail the measures and procedures to be used to comply with the quality control provisions of the construction contract, including, but not limited to, all quality control provisions and tests required by the Federal specifications. The program shall include as a minimum:
 - (1) The name of the person representing the sponsor who has overall responsibility for contract administration for the project and the authority to take necessary actions to comply with the contract.
 - (2) Names of testing laboratories and consulting engineer firms with quality control responsibilities on the project, together with a description of the services to be provided.
 - (3) Procedures for determining that testing laboratories meet the requirements of the American Society of Testing Materials standards on laboratory evaluation referenced in the contract specifications (D3666, C1077).
 - (4) Qualifications of engineering supervision and construction inspection personnel.
 - (5) A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test.
 - (6) Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, that the proper corrective actions, where necessary, are undertaken.
 - (b) Submit at completion of the project, a final test and quality control report documenting the results of all tests performed, highlighting those tests that failed or did not meet the applicable test standard. The report shall include the pay reductions applied and reasons for accepting any out-of-tolerance material. An interim test and quality control report shall be submitted, if requested by the FAA.
 - (c) Failure to provide a complete report as described in paragraph (b), or failure to perform such tests, shall, absent any compelling justification, result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction shall be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under the grant agreement.
 - (d) The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that sponsor tests results are inaccurate.
2. For a project to replace or reconstruct pavement at the airport, the sponsor shall implement an effective airport pavement maintenance management program as is required by the assurance in Section III.C.11 of the "Terms and Conditions of Accepting Airport Improvement Program Grants". The sponsor shall use such program for the useful life of any pavement constructed, reconstructed, or repaired with Federal financial assistance at the airport. An effective pavement maintenance management program is one that details the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed. An airport sponsor may use any form of inspection program it deems appropriate, however, the program must, as a minimum, include the following:
 - (a) Pavement Inventory. The following must be depicted in an appropriate form and level of detail:
 - (1) Location of all runways, taxiways, and aprons
 - (2) Dimensions
 - (3) Type of pavement
 - (4) Year of construction or most recent major rehabilitation

For compliance with the Airport Improvement Program assurances, pavements that have been constructed, reconstructed, or repaired with Federal financial assistance shall be so depicted.

(b) Inspection Schedule.

(1) Detailed Inspection. A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available, i.e., Pavement Condition Index (PCI) survey as set forth in Advisory Circular 150/5380-6, Guidelines and Procedures for Maintenance of Airport Pavements, the frequency of inspections may be extended to three years.

(2) Drive-by Inspection. A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition.

(c) Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The types of distress, their locations, and remedial action, scheduled or performed, must be documented. The minimum information to be recorded is listed below.

- (1) Inspection date
- (2) Location
- (3) Distress types
- (4) Maintenance scheduled or performed

For drive-by inspections, the date of inspection and any maintenance performed must be recorded.

(d) Information Retrieval. An airport sponsor may use any form of record keeping it deems appropriate, so long as the information and records produced by the pavement survey can be retrieved to provide a report to the FAA as may be required.

(e) Reference. Refer to Advisory Circular 150/5380-6, Guidelines and Procedures for Maintenance of Airport Pavements, for specific guidelines and procedures for maintaining airport pavements and establishing an effective maintenance program. Specific types of distress, their probable causes, inspection guidelines, and recommended methods of repair are presented.

3. Construction Safety Plan:

It is understood and agreed by and between the parties hereto that the Sponsor shall develop a construction safety plan that is acceptable to the FAA for the airport construction project as described in the Project Application and that the United States will not make nor be obligated to make payments involving the aforesaid airport construction project until the Sponsor has submitted a construction safety plan that is acceptable to the FAA in and to said airport construction project (or any portion thereof for which grant payment is sought).

4. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before **July 28, 2010**, or such subsequent date as may be prescribed in writing by the FAA.



U.S. Department
of Transportation
Federal Aviation
Administration

Western-Pacific Region
Airports Division
Los Angeles Airports District Office

P.O. Box 92007
Los Angeles, CA 90009

JUL 28 2010

Luis Estrada
Director of Utility Services
608 Heber Avenue
Calexico, CA 92231

Dear Mr. Estrada:

Calexico International Airport
Calexico, CA: AIP 3-06-0034-014-2010
Grant Offer

It is our pleasure to inform you the Calexico International Airport, fiscal year 2010 Airport Improvement Program (AIP) Grant No. 3-06-0034-014-2010 has been approved.

Enclosed are three (3) original copies of the grant agreement, under which the United States commits itself to participate in the allowable cost of the project not to exceed \$513,000.

Your acceptance of the grant offer will obligate the City of Calexico to accomplish the described construction project. An official of the sponsor shall accept this offer no later than July 28, 2010, by signing the enclosed grant agreement in the space provided.

Please note that the date of execution of the grant agreement shall be no later than July 28, 2010. The date of the Certificate of Sponsor's Attorney should NOT be earlier than the date of execution.

When the documents are fully executed, attested, certified and impressed with appropriate seal, please return two (2) original copies of the agreement to our office.

If you have any questions, please call your Program Manager, Ms. Kimchi Hoang, at (310) 725-3617 or me at (310) 725-3621.

Sincerely,

Ruben C. Cabalbag
Acting Manager, Los Angeles Airports District Office

Enclosure



GRANT AGREEMENT

U.S. Department of Transportation
Federal Aviation Administration

Date of Offer: **JUL 28 2010**
Project Number: 3-06-0034-014-2010

Recipient: City of Calexico (Herein called "Sponsor")
Airport: Calexico International Airport

OFFER

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States' share, ninety five percent (95%) of the allowable costs incurred in accomplishing the project consisting of the following:


"Install Airfield Guidance Markings & Signs; Install PAPI & REILs"

as more particularly described in the Project Application dated 04/26/2010.

The maximum obligation of the United States payable under this Offer shall be \$513,000 for airport development, \$0 for noise program implementation, \$0 for land, and \$0 for planning.

This offer is made in accordance with and for the purpose of carrying out the provisions of Title 49, United States Code, herein called Title 49 U.S.C. Acceptance and execution of this offer shall comprise a Grant Agreement, as provided by Title 49 U.S.C., constituting the contractual obligations and rights of the United States and the Sponsor.

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION


Ruben C. Cabalbag
Acting Manager, Los Angeles Airports District Office

SPECIAL CONDITIONS

Terms and Conditions Signed and Dated on 06/21/2010

Please note that this grant offer may be funded all or in part, with funds from the Small Airport Fund.

ACCEPTANCE

The Sponsor agrees to accomplish the project in compliance with the terms huy12341@ and conditions contained herein, in the Project Application, and in the November 2008 "Terms and Conditions of Accepting Airport Improvement Program Grants" signed on 06/21/2010.

Executed this ____ day of _____, 2010

Signature of Sponsor's Designated Official Representative

(Seal)

Title

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify: That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of California. Further, I have examined the foregoing Grant Agreement, and the actions taken by said Sponsor relating thereto, and find that the acceptance thereof by said Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and Title 49 U.S.C. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Signature of Sponsor's Attorney

Executed this ____ day of _____, 2010

PROJECT NO.: 3-06-0034-014-2010

DATE OF GRANT OFFER:

JUL 28 2010

ATTACHMENT A: SPECIAL CONDITIONS

1. The sponsor agrees to perform the following:

(a) Furnish a construction management program to FAA prior to the start of construction which shall detail the measures and procedures to be used to comply with the quality control provisions of the construction contract, including, but not limited to, all quality control provisions and tests required by the Federal specifications. The program shall include as a minimum:

- (1) The name of the person representing the sponsor who has overall responsibility for contract administration for the project and the authority to take necessary actions to comply with the contract.
- (2) Names of testing laboratories and consulting engineer firms with quality control responsibilities on the project, together with a description of the services to be provided.
- (3) Procedures for determining that testing laboratories meet the requirements of the American Society of Testing Materials standards on laboratory evaluation referenced in the contract specifications (D3666, C1077).
- (4) Qualifications of engineering supervision and construction inspection personnel.
- (5) A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test.
- (6) Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, that the proper corrective actions, where necessary, are undertaken.

(b) Submit at completion of the project, a final test and quality control report documenting the results of all tests performed, highlighting those tests that failed or did not meet the applicable test standard. The report shall include the pay reductions applied and reasons for accepting any out-of-tolerance material. An interim test and quality control report shall be submitted, if requested by the FAA.

(c) Failure to provide a complete report as described in paragraph (b), or failure to perform such tests, shall, absent any compelling justification, result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction shall be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under the grant agreement.

(d) The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that sponsor tests results are inaccurate.

2. For a project to replace or reconstruct pavement at the airport, the sponsor shall implement an effective airport pavement maintenance management program as is required by the assurance in Section III.C.11 of the "Terms and Conditions of Accepting Airport Improvement Program Grants". The sponsor shall use such program for the useful life of any pavement constructed, reconstructed, or repaired with Federal financial assistance at the airport. An effective pavement maintenance management program is one that details the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed. An airport sponsor may use any form of inspection program it deems appropriate, however, the program must, as a minimum, include the following:

(a) Pavement Inventory. The following must be depicted in an appropriate form and level of detail:

- (1) Location of all runways, taxiways, and aprons
- (2) Dimensions
- (3) Type of pavement
- (4) Year of construction or most recent major rehabilitation

For compliance with the Airport Improvement Program assurances, pavements that have been constructed, reconstructed, or repaired with Federal financial assistance shall be so depicted.

(b) Inspection Schedule.

- (1) **Detailed Inspection.** A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available, i.e., Pavement Condition Index (PCI) survey as set forth in Advisory Circular 150/5380-6, Guidelines and Procedures for Maintenance of Airport Pavements, the frequency of inspections may be extended to three years.
- (2) **Drive-by Inspection.** A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition.

(c) Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The types of distress, their locations, and remedial action, scheduled or performed, must be documented. The minimum information to be recorded is listed below.

- (1) Inspection date
- (2) Location
- (3) Distress types
- (4) Maintenance scheduled or performed

For drive-by inspections, the date of inspection and any maintenance performed must be recorded.

- (d) **Information Retrieval.** An airport sponsor may use any form of record keeping it deems appropriate, so long as the information and records produced by the pavement survey can be retrieved to provide a report to the FAA as may be required.
- (e) **Reference.** Refer to Advisory Circular 150/5380-6, Guidelines and Procedures for Maintenance of Airport Pavements, for specific guidelines and procedures for maintaining airport pavements and establishing an effective maintenance program. Specific types of distress, their probable causes, inspection guidelines, and recommended methods of repair are presented.

3. Construction Safety Plan:

It is understood and agreed by and between the parties hereto that the Sponsor shall develop a construction safety plan that is acceptable to the FAA for the airport construction project as described in the Project Application and that the United States will not make nor be obligated to make payments involving the aforesaid airport construction project until the Sponsor has submitted a construction safety plan that is acceptable to the FAA in and to said airport construction project (or any portion thereof for which grant payment is sought).

4. TRAFFICKING IN PERSONS:

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity--

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either--

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

5. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before July 28, 2010, or such subsequent date as may be prescribed in writing by the FAA.